Assembly Bill No. 2065

Passed the Assembly September 1, 2002

_____

Chief Clerk of the Assembly

Passed the Senate September 1, 2002

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of

_____, 2002, at _____ o'clock __M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17052.2, 17276, 17276.3, 18662, 18663, 18668, 19136.8, 19183, 23457, 24348, 24416, 24416.3, and 24449 of, and to add and repeal Sections 7093.8 and 19444 of, the Revenue and Taxation Code, and to amend Section 13043 of the Unemployment Insurance Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2065, Oropeza. Sales and use taxes: income and bank and corporation taxes.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Any unpaid taxes due and payable under that law are subject to penalties, interest, and any expenses and fees associated with the collection of the taxes owed.

This bill, for the period beginning on October 1, 2002, and ending on June 30, 2003, would authorize the State Board of Equalization to forgive any penalties and interest on unpaid taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is reduced by an eligible amount, as defined.

The Personal Income Tax Law imposes a tax measured by the income of residents and part-year residents. Any unpaid taxes due and payable under that law are subject to penalties, interest, and any expenses and fees associated with the collection of the taxes owed.

This bill, for the period beginning on October 1, 2002, and ending on June 30, 2003, would authorize the Franchise Tax Board to forgive any penalties, interest, and fees on unpaid taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is reduced by an eligible amount, as defined.

The Personal Income Tax Law authorizes various credits against the tax imposed by that law, including a credit for credentialed teachers in an amount equal to the lesser of (1) the applicable of specified amounts based upon years of service as a teacher, or (2) 50% of the amount of tax imposed upon the

taxpayer's income that is attributable to service as a teacher at a qualifying educational institution.

This bill would suspend the credit for taxable years beginning on or after January 1, 2002, and before January 1, 2003.

Existing law allows individual and corporate taxpayers to utilize net operating loss carryovers for purposes of offsetting their individual and corporate tax liabilities.

This bill would disallow the deduction for specified net operating loss carryovers in the 2002 and 2003 taxable years. The bill would extend the carryover period for the net operating losses, thus allowing the taxpayers to have the same number of years to utilize the deduction as they would have if the change had not been enacted. For net operating losses incurred in taxable years beginning on and after January 1, 2004, this bill would allow a net operating loss carryforward deduction in an amount equal to 90% of the net operating loss incurred.

Existing law requires the transferee of real property to withhold $3^1/_3$% of the purchase price of the property if the property was either acquired from a person, who is not a resident, or who after the transfer of the real property, will no longer be a resident of this state or from a corporation, if after the transfer that corporation has no permanent place of business in this state.

This bill, for taxable years beginning on or after January 1, 2003, would extend this $3^1/_3$% withholding requirement to specified transfers of real property acquired from an individual.

Existing law requires the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding taxes on wages paid, but allows withholding at a rate of 6% with respect to supplemental wages in lieu of the withholding tables.

This bill would allow withholding at a rate of 9.3% with respect to stock options and bonus payments, in lieu of the withholding tables or the specified withholding rate with respect to supplemental wages, and would also make related conforming changes.

Existing law, with respect to the administration of income and corporate taxes, imposes penalties with respect to the underpayment of taxes.

This bill would provide for the waiver of certain penalties imposed for the underpayment of tax with respect to any law enacted during the 2002 calendar year.

The Bank and Corporation Tax Law, in specified conformity to federal income tax laws allows a deduction for bad debts, except that, among other things, the deduction of a savings and loan association, or bank or financial corporation is determined in accordance with special rules that allow a deduction for a reasonable addition to a reserve for bad debts.

This bill would, with respect to banks, modify that special rule to provide additional conformity to federal income tax laws relating to reserves for losses on loans of banks, except as otherwise provided. This bill would also make related changes with respect to the alternative minimum tax.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 7093.8 is added to the Revenue and Taxation Code, to read:

7093.8. (a) (1) For the period beginning on October 1, 2002, and ending on June 30, 2003, an eligible taxpayer's liability, with respect to any unpaid taxes, may be satisfied by the payment of an eligible amount. The authority granted by this section is limited to an unpaid tax liability that has been determined by the State Board of Equalization to be a high-risk collection account.

(2) The liability of an eligible taxpayer for any unpaid penalties and interest included in the computation of the unpaid tax liability shall be extinguished only upon receipt by the State Board of Equalization of all payments equal to the eligible amount on or before the final due date for payment established by the State Board of Equalization.

(b) For purposes of this section, the following definitions apply:

(1) ''Eligible taxpayer'' means any person that receives notification from the State Board of Equalization that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.

(2) ''Eligible amount'' means an amount equal to any unpaid tax liability, excluding penalties and interest, owed by the eligible taxpayer that is paid in one or more installments, as determined by the State Board of Equalization, on or before the due date established by the State Board of Equalization, but in no event later than June 30, 2004.

(3) ''High-risk collection account'' means any unpaid tax liability of a taxpayer where satisfaction of that liability under this section would be in the best interest of the state and shall include any unpaid tax liability for which the State Board of Equalization has made either of the following determinations:

(A) Under the State Board of Equalization's collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.

(B) The unpaid tax liability would not be paid in full within a reasonable period of time.

(4) ''Unpaid tax liability'' means any final liability under Part 1 (commencing with Section 6001), including tax, penalties, and interest, that are owed by a person and, as of October 1, 2002, are unpaid.

(c) No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to October 1, 2002.

(d) The determinations made by the State Board of Equalization pursuant to this section shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.

(e) Nothing in Section 7056, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the State Board of Equalization for purposes of this section, or the data used or to be used for determining those standards if the State Board of Equalization determines that the disclosure will seriously impair assessment, collection, or enforcement under this part.

(f) Nothing in this section shall authorize the State Board of Equalization to compromise any final tax liability.

(g) The Legislature finds that it is essential for fiscal purposes that the special collection efforts authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title

2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued in implementing and administering the program required by this section.

(h) This section shall be operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after October 1, 2002, and before July 1, 2003.

(i) Whenever a ''high-risk collection account'' is forgiven of any penalties and interest pursuant to this section, the public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of related penalties and interest relieved.

(3) A summary of the reason why the relief is in the best interest of the state.

(j) This section shall remain in effect only until December 31, 2004, and as of that date is repealed.

SEC. 1.3. Section 17052.2 of the Revenue and Taxation Code is amended to read:

17052.2. (a) For each taxable year beginning on or after January 1, 2000, and before January 1, 2002, and for each taxable year beginning on or after January 1, 2003, there shall be allowed as a credit against the ''net tax'' (as defined by Section 17039) to a credentialed teacher an amount equal to the amount determined in subdivision (b).

(b) The amount of the credit shall be the lesser of the amounts computed under paragraph (1) or (2):

(1) In the case of any credentialed teacher who has, as of the last day of the taxable year:

(A) Completed at least four but less than six years of service as a credentialed teacher, the credit shall be two hundred fifty dollars ($250).

(B) Completed at least six but less than 11 years of service as a credentialed teacher, the credit shall be five hundred dollars ($500).

(C) Completed at least 11 but less than 20 years of service as a credentialed teacher, the credit shall be one thousand dollars ($1,000).

(D) Completed 20 or more years of service as a credentialed teacher, the credit shall be one thousand five hundred dollars ($1,500).

(E) For purposes of determining years of service, years of service performed as a teacher in a qualifying educational institution, which otherwise meets the criteria specified in subdivision (d) except that the qualifying educational institution is not located in this state, in another state shall qualify for each year the teacher was credentialed by the public education agency in that state.

(2) Fifty percent of the amount determined as follows:

(A) Divide the amount received by the taxpayer as wages and salary for services as a credentialed teacher, as defined in paragraph (3) of subdivision (c), by the taxpayer's total adjusted gross income from all sources.

(B) Multiply the taxpayer's total tax, as defined in paragraph (4) of subdivision (c), by a ratio, not to exceed 1.00, that is otherwise equal to the ratio determined for the taxpayer under subparagraph (A).

(c) For purposes of this section, all of the following definitions apply:

(1) ''Credentialed teacher'' means a person who holds a preliminary or professional clear credential as determined by the Commission on Teacher Credentialing pursuant to Article 1 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of Title 2 of the Education Code and who teaches at a qualifying educational institution.

(2) ''Qualifying educational institution'' means any elementary, secondary, or vocational-technical school located in this state providing education for kindergarten, grades 1 to 12, inclusive, or any part thereof. ''Qualifying educational institution'' includes an agency or instrumentality of the federal government providing education for grades kindergarten, grades 1 to 12, inclusive, or any part thereof, at any location within this state, including an Indian reservation or a military installation located within the geographical borders of this state, where a credentialed teacher is employed by the federal government or an agency or instrumentality thereof. ''Qualifying educational institution'' includes any elementary, secondary, or vocational technical school located in California, that files an affidavit

pursuant to Sections 33190 and 33191 of the Education Code, and provides education for kindergarten and grades 1 to 12, inclusive, or any part thereof.

(3) ''Wages and salaries for services as a credentialed teacher'' includes only those amounts received with respect to services performed as a credentialed teacher, but does not include pensions or other deferred compensation.

(4) ''Total tax'' means the tax imposed under this part for the taxable year, before the application under Section 19007 of any payment of estimated tax or any installment thereof, less all credits allowed for the taxable year except for the following:

(A) The credit allowed under this section.

(B) The credit allowed under Section 17061 (relating to refunds under the Unemployment Insurance Code).

(C) The credit allowed under Section 19002 (relating to tax withholding).

(D) Any refundable credit that is allowed under this part.

SEC. 1.5. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable

percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term ''net loss'' means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Net operating loss carrybacks shall not be allowed.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute ''five taxable years'' in lieu of ''20 taxable years'' except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute ''10 taxable years'' in lieu of ''20 taxable years.''

(2) For any taxable year beginning before January 1, 2000, in the case of a ''new business,'' the ''five taxable years'' in paragraph (1) shall be modified to read as follows:

(A) ''Eight taxable years'' for a net operating loss attributable to the first taxable year of that new business.

(B) ''Seven taxable years'' for a net operating loss attributable to the second taxable year of that new business.

(C) ''Six taxable years'' for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) ''Eligible small business'' means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), ''new business'' means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) ''Title 11 or similar case'' shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or ''S corporation,'' paragraphs (1) and (2) shall be applied to the partnership or ''S corporation.''

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business

in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (''prior trade or business activity''), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) ''Related person'' shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) ''Acquire'' shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term ''new business'' shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) ''Biopharmaceutical activities'' means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) ''Other biotechnology activities'' means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a ''qualified taxpayer'' as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 2. Section 17276.3 of the Revenue and Taxation Code is amended to read:

17276.3. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(b) For any carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2002, and before January 1, 2003.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2002.

SEC. 3. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or

agency of the state), having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person failing to withhold from any payments any amounts required by subdivision (a) to be withheld is liable for the amount withheld or the amount of taxes due from the person to whom the payments are made to an extent not in excess of the amounts required to be withheld, whichever is greater, unless it is shown that the failure to withhold is due to reasonable cause.

(e) (1) In the case of any disposition of a California real property interest by an individual, the transferee (including for this purpose any intermediary or accommodator in a deferred exchange) shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed.

(2) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee shall be required to withhold any amount under this subdivision unless the sales price of the California real property conveyed exceeds one hundred thousand dollars ($100,000).

(B) No transferee (other than an intermediary or an accommodator in a deferred exchange) shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) No transferee shall be required to withhold under this subdivision when the transferee is a corporate beneficiary under

a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.

(D) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based upon all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the California real property being conveyed is the principal residence of the transferor (within the meaning of Section 121 of the Internal Revenue Code).

(E) (i) No transferee (including for this purpose any intermediary or accommodator in a deferred exchange) shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the California real property being conveyed is exchanged, or will be exchanged, for property of like kind (within the meaning of Section 1031 of the Internal Revenue Code), but only to the extent of the amount of the gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

(ii) Clause (i) shall not apply to the extent that any exchange does not qualify for nonrecognition treatment for California income tax purposes under Section 1031 of the Internal Revenue Code, in whole or in part, due to the failure of the transaction to comply with the provisions of Section 1031(a)(3) of the Internal Revenue Code, relating to requirement that property be identified and that exchange be completed not more than 180 days after transfer of the exchanged property.

(iii) In any case where clause (ii) applies, the transferee (including for this purpose any intermediary or accommodator in a deferred exchange) shall be required to notify the Franchise Tax Board in writing within 10 days of the expiration of the statutory periods specified in Section 1031(a)(3) of the Internal Revenue Code and shall thereafter remit the applicable withholding amounts determined under this subdivision in accordance with paragraph (4).

(F) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on

all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the California real property has been compulsorily or involuntarily converted (within the meaning of Section 1033 of the Internal Revenue Code) and that the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(G) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the transaction will result in a loss for California income tax purposes.

(3) (A) In the case of any transaction otherwise subject to this subdivision that qualifies as an ''installment sale'' (within the meaning of Section 453(b) of the Internal Revenue Code) for California income tax purposes, the provisions of this subdivision may, upon the irrevocable written election of the transferee, be separately applied to each payment to be made under the terms of the installment sale agreement between the parties.

(B) For purposes of subparagraph (A), subparagraph (A) of paragraph (2) shall not apply to each individual payment to be received under the terms of the installment sale agreement.

(C) The election under this paragraph shall be made at the time, and in the form and manner, specified by the Franchise Tax Board in forms and instructions, except that the form shall, at a minimum, include the requirement specified in subparagraph (D) of this paragraph.

(D) The election under this paragraph shall only be valid if the transferee agrees to withhold and remit from each installment payment the amount specified under this subdivision in the form and manner, and at the time, specified in paragraph (4).

(4) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board.

(5) For purposes of this subdivision, ''California real property interest'' means an interest in real property located in California

and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(6) For purposes of this subdivision, ‘‘real estate escrow person’’ means any of the following persons involved in the real estate transaction:

(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.

(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(7) (A) Unless the real estate escrow person provides ‘‘assistance,’’ it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, ‘‘assistance’’ includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision or, upon request of the parties, withholding an amount under this subdivision and remitting that amount to the Franchise Tax Board.

(C) For purposes of this paragraph, ‘‘assistance’’ does not include providing the written notification of the withholding requirements of this subdivision.

(D) In a case where the real estate escrow person provides ‘‘assistance’’ in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars ($45).

(8) For purposes of this subdivision, ‘‘sales price’’ means the sum of all of the following:

(A) The cash paid, or to be paid, but excluding for this purpose any stated or unstated interest or original issue discount (as determined under Sections 1271 through 1275, inclusive, of the Internal Revenue Code).

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(f) (1) In the case of any disposition of a California real property interest by a person (but not a partnership as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, or a corporation, or an individual), when the return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code indicates, or the authorization for the disbursement of the transaction's funds instructs, that the funds be disbursed either to a transferor with a last known street address outside the boundaries of this state at the time of the transfer of the title to the California real property or to the financial intermediary of the transferor, the transferee shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed.

(2) In the case of any disposition of a California real property interest by a corporation, the transferee shall be required to withhold an amount equal to $3^1/_3$ percent of the sales price of the California real property conveyed, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:

(A) It is not organized and existing under the laws of California.

(B) It does not qualify with the office of the Secretary of State to transact business in California.

(C) It does not maintain and staff a permanent office in California.

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee shall be required to withhold any amount under this subdivision if the sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000).

(B) No transferee shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) No transferee shall be required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee shall be required to withhold under this subdivision when the transferee is a corporate beneficiary under a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.

(E) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury that the transferor is a corporation with a permanent place of business in California.

(4) (A) At the request of the transferor, the Franchise Tax Board may authorize that a reduced amount or no amount be withheld under this subdivision if the Franchise Tax Board determines that to substitute a reduced amount or no amount shall not jeopardize the collection of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). If the transferor provides documentation sufficient for the Franchise Tax Board to determine the actual gain required to be recognized on the transaction, the Franchise Tax Board may authorize a reduced amount based on the amount of the gain, as determined, which will result in a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) from the inclusion of the gain in the gross amount of the transferor.

(B) Within 45 days after receiving a request that a reduced amount or no amount be withheld, the Franchise Tax Board shall either authorize a reduced amount or no amount, or deny the request.

(C) In the case where the parties to the transaction are requesting that a reduced amount or no amount be withheld and the response by the Franchise Tax Board to the request has not been received at the time title to the California real property is transferred, the parties may direct the real estate escrow person to hold in trust for 45 days the amount required to be withheld under this subdivision. The parties shall instruct the real estate escrow person that at the end of 45 days the real estate escrow person shall remit the amount withheld to the Franchise Tax Board in

accordance with this section, unless the Franchise Tax Board has authorized that a reduced amount or no amount be withheld.

(5) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and at the time as the Franchise Tax Board shall determine.

(6) ''California real property interest'' means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(7) For purposes of this subdivision, ''financial intermediary'' means an agent for the purpose of receiving and transferring funds to a principal.

(8) For purposes of this subdivision, ''real estate escrow person'' means any of the following persons involved in the real estate transaction:

(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.

(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(9) (A) Unless the real estate escrow person provides ''assistance,'' it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, ''assistance'' includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision, helping the parties request that the Franchise Tax Board authorize a reduced amount or no amount be withheld under this subdivision, or, upon request of the parties, withholding an amount under this subdivision and remitting the amount to the Franchise Tax Board.

(C) For purposes of this paragraph, ''assistance'' does not include providing the written notification of the withholding requirements of this subdivision, or providing the certification that the transferor is a corporation with a permanent place of business in California.

(D) In a case where the real estate escrow person provides ''assistance'' in complying with the withholding requirements of

this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars ($45).

(10) For purposes of this subdivision, ''sales price'' means the sum of all of the following:

(A) The cash paid, or to be paid. The term ''cash paid, or to be paid'' does not include stated or unstated interest or original issue discount (as determined by Sections 1271 to 1275, inclusive, of the Internal Revenue Code).

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(g) Whenever any person has withheld any amount pursuant to this section, the amount so withheld shall be held in trust for the State of California. The amount of the fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(h) Withholding shall not be required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting.

(i) In the case of any payment described in subdivision (h), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

(j) (1) The amendments to this section made by the act adding this subdivision shall only apply to dispositions of California real property interests that occur on or after January 1, 2003.

(2) In the case of any payments received on or after January 1, 2003, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2003, the amendments to

this section made by the act adding this subdivision shall not apply to those payments.

SEC. 4. Section 18663 of the Revenue and Taxation Code is amended to read:

18663. (a) The Franchise Tax Board shall annually (or more often if necessary) prepare and make available to the Employment Development Department, wage withholding tables that shall be used by every employer making payment of any wages to a resident employee for services performed either within or without this state; or to a nonresident employee for services performed in this state, to deduct and withhold from those wages for each payroll period, a tax computed in a manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054, a sum that is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) resulting from the inclusion in the gross income of the employee the wages which were subject to withholding.

(b) (1) For supplemental wages paid on or after January 1, 1992, the rate of withholding that may be applied to supplemental wages in lieu of the wage withholding tables specified in subdivision (a) shall be 6 percent.

(2) For purposes of this subdivision, ''supplemental wages'' includes, but is not limited to, bonus payments, overtime payments, commissions, sales awards, back pay including retroactive wage increases, and reimbursements for nondeductible moving expenses that are paid for the same or a different period, or without regard to a particular period.

(c) For stock options and bonus payments that constitute wages paid on or after January 1, 2002, the rate of withholding that may be applied to those stock options and bonus payments in lieu of the wage withholding tables specified in subdivision (a) shall, notwithstanding subdivision (b), be 9.3 percent.

SEC. 5. Section 18668 of the Revenue and Taxation Code is amended to read:

18668. (a) Every person required under this article to deduct and withhold any tax is hereby made liable for that tax, to the extent provided by this section and, insofar as they are not inconsistent with this article, all the provisions of this part relating to penalties, interest, assessment, and collections shall apply to

persons subject to this part, and for these purposes any amount required to be deducted and paid to the Franchise Tax Board under this article shall be considered the tax of the person. Any person who fails to withhold from any payments any amount required to be withheld under this article is liable for the amount withheld or the amount of taxes due from the taxpayer to whom the payments are made but not in excess of the amount required to be withheld, whichever is more, unless it is shown that the failure to withhold is due to reasonable cause.

(b) If any amount required to be withheld under this article is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19521, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) In lieu of the amount provided for in subdivision (a), unless it is shown that the failure to withhold is due to reasonable cause, whenever any transferee is required to withhold any amount pursuant to subdivision (e) or (f) of Section 18662, the transferee is liable for the greater of the following amounts for failure to withhold only after the transferee, as specified, is notified in writing of the requirements under subdivision (e) or (f) of Section 18662:

(1) Five hundred dollars ($500).

(2) Ten percent of the amount required to be withheld under subdivision (e) or (f) of Section 18662.

(e) (1) Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person shall be liable for the amount specified in subdivision (d), when written notification of the withholding requirements of subdivision (e) or (f) of Section 18662 is not provided to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) and the California real property disposition is subject to withholding under subdivision (e) or (f) of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) in

substantially the same form as follows:

‘‘In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to $3^1/_3$ percent of the sales price in the case of a disposition of California real property interest by either:

1. A seller who is an individual or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. A corporate seller that has no permanent place of business in California.

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars ($500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars ($100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California, OR

3. The seller, who is an individual, executes a written certificate, under the penalty of perjury, of any of the following:

A. That the California real property being conveyed is the seller’s principal residence (within the meaning of Section 121 of the Internal Revenue Code).

B. That the California real property being conveyed is or will be exchanged for property of like kind (within the meaning of Section 1031 of the Internal Revenue Code), but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

C. That the California real property has been compulsorily or involuntarily converted (within the meaning of Section 1033 of the Internal Revenue Code) and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

D. That the California real property transaction will result in a loss for California income tax purposes.

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement.

The California statutes referenced above include provisions which authorize the Franchise Tax Board to grant reduced withholding and waivers from withholding on a case-by-case basis for corporations or other entities.‘

(3) The real estate escrow person shall not be liable under this subdivision, if the tax due as a result of the disposition of California real property is paid by the original or extended due date of the transferor’s return for the taxable year in which the disposition occurred.

(4) The real estate escrow person and the transferee shall not be liable under paragraph (1) or subdivision (d), if the failure to withhold is the result of the real estate escrow person’s reliance, based on good faith and on all the information of which he or she has knowledge, upon a written certificate executed by the transferor under penalty of perjury certifying to any of the following:

(A) Where the transferor is an individual:

(i) That the California real property being conveyed is the principal residence of the transferor within the meaning of Section 121 of the Internal Revenue Code.

(ii) That the California real property being conveyed is or will be exchanged for property of like kind within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

(iii) That the California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(iv) That the California real property transaction will result in a loss for California income tax purposes.

(B) Where the transferor is a corporation, that the transferor is a corporation with a permanent place of business in California.

(5) Any transferor who for the purpose of avoiding the withholding requirements of subdivision (e) or (f) of Section 18662 knowingly executes a false certificate pursuant to this subdivision shall be liable for twice the amount specified in subdivision (d).

(6) Unless the failure to notify is due to willful disregard of the withholding requirements of subdivision (e) or (f) of Section 18662, the real estate escrow person shall not be liable under this subdivision if the disposition of California real property occurs prior to July 1, 1991.

(f) The amount of tax required to be deducted and withheld under this article shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 6. Section 19136.8 of the Revenue and Taxation Code is amended to read:

19136.8. (a) No addition to tax shall be made under Section 19136 for any period before April 15, 2003, with respect to any underpayment of an installment for the 2002 taxable year, to the extent that the underpayment was created or increased by any provision of law enacted or amended by an act chaptered during the 2002 calendar year.

(b) No addition of tax shall be made under Section 19142 for any period before April 15, 2003, with respect to any underpayment of an installment for the 2002 taxable year, to the extent that the underpayment was created or increased by any provision of law enacted or amended by an act chaptered during the 2002 calendar year.

(c) The Franchise Tax Board shall implement this section in a reasonable manner.

SEC. 7. Section 19183 of the Revenue and Taxation Code is amended to read:

19183. (a) (1) A penalty shall be imposed for failure to file correct information returns, as required by this part, and that penalty shall be determined in accordance with Section 6721 of the Internal Revenue Code.

(2) Section 6721(e) of the Internal Revenue Code is modified to the extent that the reference to Section 6041A(b) of the Internal Revenue Code shall not apply.

(b) (1) A penalty shall be imposed for failure to furnish correct payee statements as required by this part, and that penalty shall be determined in accordance with Section 6722 of the Internal Revenue Code.

(2) Section 6722(c) of the Internal Revenue Code is modified to the extent that the references to Sections 6041A(b) and 6041A(e) of the Internal Revenue Code shall not apply.

(c) A penalty shall be imposed for failure to comply with other information reporting requirements under this part, and that penalty shall be determined in accordance with Section 6723 of the Internal Revenue Code.

(d) (1) The provisions of Section 6724 of the Internal Revenue Code relating to waiver, definitions, and special rules, shall apply, except as otherwise provided.

(2) Section 6724(d)(1) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (a) of Section 18640, in lieu of Section 6044(a)(1) of the Internal Revenue Code.

(ii) Subdivision (a) of Section 18644, in lieu of Section 6050A(a) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4), 4093(e), 4101(d), 6041(b), 6041A(b), 6045(d), 6051(d), and 6053(c)(1) of the Internal Revenue Code shall not apply.

(C) The term ‘‘information return’’ shall also include the return required by paragraph (1) of subdivision (i) of Section 18662.

(3) Section 6724(d)(2) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (b) of Section 18640, in lieu of Section 6044(e) of the Internal Revenue Code.

(ii) Subdivision (b) of Section 18644, in lieu of Section 6050A(b) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4)(B), 6031(b), 6037(b), 6041A(e), 6045(d), 6051(d), 6053(b), and 6053(c) of the Internal Revenue Code shall not apply.

(C) The term ‘‘payee statement’’ shall also include the statement required by paragraph (2) of subdivision (i) of Section 18662.

(e) In the case of each failure to provide a written explanation as required by Section 402(f) of the Internal Revenue Code, at the time prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Franchise Tax Board and in the same manner as tax, by the person failing to provide that written explanation, an amount equal to ten dollars ($10) for each failure, but the total amount imposed on that person for all those failures during any calendar year shall not exceed five thousand dollars ($5,000).

(f) Any penalty imposed by this part shall be paid on notice and demand by the Franchise Tax Board and in the same manner as tax.

SEC. 8. Section 19444 is added to the Revenue and Taxation Code, to read:

19444. (a) (1) For the period beginning on October 1, 2002, and ending on June 30, 2003, an eligible taxpayer's liability, with respect to any unpaid taxes, may be satisfied by the payment of an eligible amount. The authority granted by this section is limited to an unpaid tax liability that has been determined by the Franchise Tax Board to be a high-risk collection account.

(2) The liability of an eligible taxpayer for any unpaid penalties, interest, and fees included in the computation of the unpaid tax liability shall be extinguished only upon receipt by the Franchise Tax Board of all payments equal to the eligible amount on or before the final due date for payment established by the Franchise Tax Board.

(b) For purposes of this section, the following definitions shall apply:

(1) ''Eligible taxpayer'' means any individual that receives notification from the Franchise Tax Board that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.

(2) ''Eligible amount'' means an amount equal to any unpaid tax liability, excluding penalties, interest, and fees, owed by the eligible taxpayer that is paid in one or more installments, as determined by the Franchise Tax Board, on or before the due date established by the Franchise Tax Board, but in no event later than June 30, 2004.

(3) ''High-risk collection account'' means any unpaid tax liability of a taxpayer where satisfaction of that liability under this

section would be in the best interest of the state, and shall include any unpaid tax liability for which the Franchise Tax Board has made either of the following determinations:

(A) Under the Franchise Tax Board's collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.

(B) The unpaid tax liability would not be paid in full within a reasonable period of time.

(4) ''Unpaid tax liability'' means any liability under Part 10 (commencing with Section 17001), including tax, penalties, interest, and fees that are owed by an individual and are unpaid.

(c) No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to October 1, 2002.

(d) The determinations made by the Franchise Tax Board pursuant to this section shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.

(e) Nothing in Section 19542, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the Franchise Tax Board for purposes of this section, or the data used or to be used for determining those standards if the Franchise Tax Board determines that the disclosure will seriously impair assessment, collection, or enforcement under this part.

(f) Nothing in this section shall authorize the Franchise Tax Board to compromise any final tax liability.

(g) The Legislature finds that it is essential for fiscal purposes that the special collection efforts authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued in implementing and administering the program required by this section.

(h) This section shall be operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after October 1, 2002, and before July 1, 2003.

(i) Whenever a ''high-risk collection account'' is forgiven of any penalties, interest, or fees pursuant to this section, the public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of related fees, penalties, and interest relieved.

(3) A summary of the reason why the relief is in the best interest of the state.

(j) This section shall remain in effect only until December 31, 2004, and as of that date is repealed.

SEC. 8.5. Section 23457 of the Revenue and Taxation Code, as amended by Section 37 of Chapter 35 of the Statutes of 2002, is amended to read:

23457. For purposes of this part, Section 57 of the Internal Revenue Code is modified as follows:

(a) Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest, shall not be applicable.

(b) Section 57(a)(6) of the Internal Revenue Code, relating to accelerated depreciation or amortization on certain property placed in service before January 1, 1987, is modified to read: With respect to each property as described in Section 1250(c) of the Internal Revenue Code as that provision read on April 1, 1970, the amount by which the deduction allowable for the taxable year for exhaustion, wear, tear, obsolescence, or amortization exceeds the depreciation deduction that would have been allowable for the taxable year, had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

SEC. 9. Section 24348 of the Revenue and Taxation Code is amended to read:

24348. (a) There shall be allowed as a deduction either of the following:

(1) Debts which become worthless within the taxable year in an amount not in excess of the part charged off within that taxable year.

(2) In the case of a bank (as defined in Section 581 of the Internal Revenue Code), in lieu of any deduction under paragraph (1), in the discretion of the Franchise Tax Board, a reasonable addition to a reserve for bad debts determined in accordance with

Section 585 of the Internal Revenue Code, relating to reserves for losses on loans of banks, except as otherwise provided.

(b) When satisfied that a debt is recoverable in part only, the Franchise Tax Board may allow that debt, in an amount not in excess of the part charged off within the taxable year, as a deduction; provided, however, that if a portion of a debt is claimed and allowed as a deduction in any year, no deduction shall be allowed in any subsequent year for any portion of the debt which in any prior year was charged off, regardless of whether claimed as a deduction in that prior year.

(c) (1) The amendments to this section made by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2002.

(2) In the case of any bank, savings and loan association, or financial corporation (whether a taxpayer or a member of a combined reporting group) that maintained a reserve for bad debts for the last taxable year beginning before January 1, 2002, and that is required by the amendments to this section made by the act adding this subdivision to change its method of computing reserves for bad debts, all of the following shall apply:

(A) That change shall be treated as a change in a method of accounting.

(B) That change shall be treated as initiated by the bank, savings and loan association, or financial corporation (whether a taxpayer or a member of a combined reporting group).

(C) That change shall be treated as made with the consent of the Franchise Tax Board.

(D) The net amount of adjustments required by Article 6 (commencing with Section 24721) of Chapter 13 to be taken into account by the bank, savings and loan association, or financial corporation (whether a taxpayer or a member of a combined reporting group):

(i) Shall be determined by taking into account only 50 percent of the ‘‘applicable excess reserves’’ (as defined in subdivision (d)), and

(ii) As so determined, shall be taken into account on the last day of the first taxable year beginning on or after January 1, 2002.

(iii) The amount of ‘‘applicable excess reserves’’ in excess of the amount taken into account under clause (i) of this subparagraph

shall be reduced to zero and shall not be taken into account for purposes of this part.

(d) (1) In the case of a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), or a financial corporation that is not allowed to use the reserve for bad debts under Section 585 of the Internal Revenue Code, the term ''applicable excess reserves'' means the balance of the reserves described in former subparagraph (B) of paragraph (1) of subdivision (a) (prior to the amendments made by the act adding this subdivision) as of the close of the last taxable year beginning before January 1, 2002.

(2) In all other cases, the term ''applicable excess reserves'' shall be zero and shall not be taken into account for purposes of this part.

(e) The amount of ''applicable excess reserves'' not taken into account pursuant to clause (iii) of subparagraph (D) of paragraph (2) of subdivision (c) or paragraph (2) of subdivision (d) shall not affect the amount of the allowable deduction under paragraph (1) of subdivision (a).

SEC. 10. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, ''net loss'' means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to

years to which net operating losses may be carried, is modified to substitute ''five taxable years'' in lieu of ''20 years'' except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute ''10 taxable years'' in lieu of ''20 taxable years.''

(2) For any income year beginning before January 1, 2000, in the case of a ''new business,'' the ''five taxable years'' referred to in paragraph (1) shall be modified to read as follows:

(A) ''Eight taxable years'' for a net operating loss attributable to the first taxable year of that new business.

(B) ''Seven taxable years'' for a net operating loss attributable to the second taxable year of that new business.

(C) ''Six taxable years'' for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) ''Eligible small business'' means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the income year.

(2) Except as provided in subdivision (g), ''new business'' means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) ''Title 11 or similar case'' shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an ''S corporation,'' paragraphs (1) and (2) shall be applied to the partnership or ''S corporation.''

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or

has been engaged in one or more trade or business activities in this state within the preceding 36 months (''prior trade or business activity''), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) ''Related person'' shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) ''Acquire'' shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term ''new business'' shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) ''Biopharmaceutical activities'' means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) ''Other biotechnology activities'' means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(*l*) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 11. Section 24416.3 of the Revenue and Taxation Code is amended to read:

24416.3. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and

Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(b) For any carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2002, and before January 1, 2003.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2002.

SEC. 12. Section 24449 of the Revenue and Taxation Code is amended to read:

24449. (a) Section 291 of the Internal Revenue Code, relating to special rules relating to corporate preference items, shall apply, except as otherwise provided.

(b) The reference in Section 291(b)(1) of the Internal Revenue Code to "Section 263(c)" shall be modified to mean the deduction under Section 24423 of this part.

SEC. 13. Section 13043 of the Unemployment Insurance Code is amended to read:

13043. (a) The amount to be deducted and withheld under this division shall be prescribed pursuant to Section 18663 of the Revenue and Taxation Code when a payment of wages is made to an employee by an employer in any of the following cases:

(1) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to the employee by the employer.

(2) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to the employee by the employer.

(3) With respect to a period beginning in one and ending in another calendar year.

(4) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to the employee.

(b) For purposes of this section, an employee's remuneration may consist of wages paid for a payroll period and supplemental wages.

Supplemental wages include, but are not limited to, bonus payments, overtime payments, commissions, sales awards, back pay including retroactive wage increases, and reimbursements for nondeductible moving expenses that are paid for the same or different period, or without regard to a particular period.

(c) When any supplemental wages are paid subsequent to the payment of regular wages, the employer may determine the personal income tax to be withheld from supplemental wages paid by (1) using a flat percentage rate pursuant to subdivision (b) of Section 18663 of the Revenue and Taxation Code without allowance for exemptions and credits and without reference to any regular payment of wages, or (2) adding the supplemental wages to the regular wages paid the employee and computing the personal income tax to be withheld on the whole amount (the computed tax minus the tax withheld from the regular wages shall be withheld from the supplemental wages). Where supplemental wages are paid at the same time as regular wages, the personal income tax to be withheld shall be computed on the total of the supplemental and regular wages and shall be determined as if the total of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

(d) For stock options and bonus payments that constitute wages paid on or after January 1, 2002, the employer may determine the personal income tax to be withheld from the stock options and bonus payments paid by either (1) using a flat percentage rate pursuant to subdivision (c) of Section 18663 of the Revenue and Taxation Code, without allowance for exemptions and credits and without reference to any regular payment of wages, or (2) adding the stock options and bonus payments to the regular wages paid the employee and computing the personal income tax to be withheld on the whole amount (the computed tax minus the tax withheld from the regular wages shall be withheld from the stock options and bonus payments). Where the stock options and bonus payments are paid at the same time as regular wages, the personal income tax to be withheld shall be computed on the total of the stock options and bonus payments and regular wages, and shall be determined as if the total of the stock options and bonus payments and the regular wages constituted a single wage payment for the regular payroll period.

SEC. 14. It is the intent of the Legislature that, in order to improve compliance with state tax laws and to accelerate the collection of accounts determined to be at high risk for collection, the staff of the Board of Equalization and the Franchise Tax Board shall, pursuant to Sections 7093.8 and 19444 of the Revenue and Taxation Code as added by this act, expeditiously institute special collection efforts to commence on October 1, 2002, and end on June 30, 2003.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In view of the fact that the State of California is experiencing a fiscal crisis, in order to improve compliance with state tax laws and to accelerate the collection of accounts that might not otherwise be collected, and in order to provide for sufficient revenues for the funding of the critical needs of the state, it is necessary that this act take effect immediately.

Approved _____, 2002

_____

Governor